

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

BOUSQUET DAIRY, INC.,

Plaintiff,

v.

HB FARMS, INC. and JERRY
HUDSON

Defendants

Case No. _____

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

Plaintiff Bousquet Dairy, Inc., a Nebraska corporation, for its Complaint against Defendants HB Farms, Inc. and Jerry Hudson, alleges and states as follows:

PARTIES

1. Plaintiff Bousquet Dairy, Inc. ("Bousquet Dairy") is a Nebraska corporation with its principal place of business in Dakota County, Nebraska.
2. Upon information and belief, Defendant HB Farms, Inc. ("HB Farms") is a Kentucky corporation with its principal place of business in Daviess County, Kentucky.
3. Upon information and belief, Defendant Jerry Hudson ("Mr. Hudson") is a resident of Daviess County, Kentucky.

VENUE AND JURISDICTION

4. The District Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a), because Bousquet Dairy is a citizen of a different state than HB Farms and Mr. Hudson, and the matter in controversy exceeds \$75,000.
5. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claim occurred in Nebraska.
6. The District Court has personal jurisdiction over HB Farms and Mr. Hudson because these parties irrevocably submitted to personal jurisdiction in

the state and federal courts in Nebraska pursuant to Big Iron Auction's terms and conditions.

STATEMENT OF FACTS

7. In late 2022, HB Farms listed for auction a 2011 New Holland T9.390 4WD tractor (the "Tractor") via Big Iron Auctions.

8. Big Iron Auctions provides their auction terms and conditions (the "Terms and Conditions") on their website at the following URL:
<https://www.bigiron.com/TermsAndConditions?readOnly=True>.

9. At all relevant times, the Terms and Conditions provided in relevant part that dispute resolutions are ultimately "the responsibility of the buyer and seller."

10. At all relevant times, the Terms and Conditions provided:

10.1. Any legal action commenced by either party to resolve any dispute arising under this Agreement will be resolved only in the courts of the State of Nebraska or in the courts of the United States of America for the District of Nebraska. Each party irrevocably submits to the personal jurisdiction of such courts and hereby waives any and all objections as to venue, inconvenient forum, and the like.

11. The Tractor was listed as Lot # HN9503. The Tractor was described in the auction listing as follows:

11.1. 2011 New Holland T9.390 4WD Tractor, 1157 hrs showing, 390 hp, FPT Cursor 9, Diesel, Water Cooled Engine, Engine oil level full, 230 Fuel Capacity, Block Heater, Power Shift Transmission, 16 Forward Speeds, 2 Reverse Speeds, Independent PTO, Large 1000 PTO, Rear PTO Location, 5 Auxiliary Hydraulics, Differential Lock, Hydraulic Brakes, Articulated Steering, 4:80-50 Firestone deep tread Front Tires, 4:80-50 Firestone Deep Tread Rear Tires, Front and Rear Duals, 3 Point Hitch, Quick Hitch, 8 Front Weights, Fenders, Heater, AC, Radio, Passenger Seating, Guidance Ready, 1 Doors, 5 remotes, cold

weather starting aid package, front and fender hid lights, factory guidance ready, high capacity HYDRALIC pump, hid cab roof work light package, GPS antenna ready, power beyond hyd, dual beacon lights, SN: ZAF211017

12. Prior to December 7, 2022, the president of Bousquet Dairy, Richard Bousquet, called HB Farms and spoke with Mr. Hudson. During this conversation, Mr. Bousquet asked Mr. Hudson if there were any issues with the Tractor. In response, Mr. Hudson stated that the Tractor was in good condition.

13. Based on the representations in the auction listing and the oral misrepresentations of Mr. Hudson, Bousquet Dairy placed a winning bid of \$197,750 for the Tractor.

14. On December 12, 2022, Bousquet Dairy paid Big Iron Auctions for the Tractor via a wire transfer.

15. On January 6, 2023, the Tractor was delivered to Benes Service in David City, Nebraska. Bousquet Dairy paid \$4,500 to transport the Tractor from Kentucky to David City.

16. Upon arrival at Benes Service, the Tractor was unable to back off the trailer because its transmission was out.

17. When Benes Service attempted to repair the transmission, the entire transmission went out. Upon further inspection, Benes Service discovered that the transmission was in a severely disintegrated state.

18. Bousquet Dairy incurred \$48,758.17 in repair costs from Benes Service attempting to repair the Tractor's transmission.

19. Bousquet Dairy incurred an additional \$24,299.88 in other service and maintenance performed by Benes Service on the Tractor, unrelated to the transmission.

20. While repairing the Tractor, Benes Service contacted the New Holland dealership where the Tractor was last serviced. During this investigation, Benes Service discovered that HB Farms had the Tractor serviced approximately one year before it was sold to Bousquet Dairy. From this inquiry, Benes Service

discovered HB Farms used the Tractor approximately 50 hours in the year before it was sold.

21. Benes Service delivered the Tractor to Bousquet Dairy on April 12, 2023.

22. Upon receipt of the Tractor from Benes Service, Bousquet Dairy used the Tractor for ordinary farm purposes. However, the Tractor again broke down on May 13, 2023 due to engine problems.

23. Subsequent to January 6, 2023, Mr. Bousquet called Mr. Hudson about the Tractor's nonfunctional transmission. Mr. Hudson stated that he would pay for the labor to put a new transmission in the Tractor.

24. On June 6, 2023, Bousquet Dairy sent HP Farms and Mr. Hudson a demand for rescission and damages. HP Farms and Mr. Hudson failed to respond to this demand.

THEORIES OF RECOVERY

FIRST THEORY OF RECOVERY – NEGLIGENT MISREPRESENTATION

25. All factual allegations above are incorporated herein by reference.

26. HB Farms represented via the auction listing the Tractor had "Power Shift Transmission, 16 Forward Speeds, 2 Reverse Speed."

27. Mr. Hudson represented verbally to Mr. Bousquet the Tractor was in good condition.

28. The information HB Farms and Mr. Hudson conveyed about the condition of the Tractor was false.

29. HB Farms and Mr. Hudson failed to exercise reasonable care or competence in obtaining information about the condition of the Tractor and communicating that information to Bousquet Dairy.

30. Bousquet Dairy justifiably relied upon HB Farms and Mr. Hudson's representations to place the winning bid on the Tractor.

31. As a result of HB Farms and Mr. Hudson's negligent misrepresentations, Bousquet Dairy has been damaged at least in the amount of

\$197,750 for the winning bid, \$48,758.17 in transmission repair costs, and \$4,500 in transportation costs.

**SECOND THEORY OF RECOVERY – FRAUDULENT
MISREPRESENTATION**

32. All factual allegations above are incorporated herein by reference.

33. HB Farms represented via the auction listing the Tractor had “Power Shift Transmission, 16 Forward Speeds, 2 Reverse Speed.”

34. Mr. Hudson represented verbally to Mr. Bousquet the Tractor was in good condition.

35. HB Farms and Mr. Hudson’s representations were false because the Tractor could not back off the trailer when delivered and the transmission was nonfunctional.

36. HB Farms and Mr. Hudson either knew their representations were false or made them recklessly without knowledge of the truth and as a positive assertion.

37. HB Farms and Mr. Hudson made their representations with the intention that Bousquet Dairy would rely upon them.

38. Bousquet Dairy relied upon HB Farms and Mr. Hudson’s representations to place the winning bid on the Tractor.

39. As a result of HB Farms and Mr. Hudson’s fraudulent misrepresentations, Bousquet Dairy has been damaged at least in the amount of \$197,750 for the winning bid, \$48,758.17 in transmission repair costs, and \$4,500 in transportation costs.

THIRD THEORY OF RECOVERY – FRAUDULENT CONCEALMENT

40. All factual allegations above are incorporated herein by reference.

41. The deteriorated condition of the Tractor’s transmission was a material fact.

42. HB Farms concealed this fact from the auction listing. Mr. Hudson concealed this fact from Mr. Bousquet in their phone conversation.

43. HB Farms and Mr. Hudson knew the Tractor's transmission was in a nonfunctional condition.

44. The condition of the Tractor's transmission was not within the reasonably diligent attention, observation, and judgment of Bousquet Dairy.

45. HB Farms and Mr. Hudson concealed the condition of the Tractor's transmission with the intention that Bousquet Dairy would be misled as to the true condition of the transmission.

46. Bousquet Dairy was reasonably misled by HB Farms and Mr. Hudson's concealment.

47. As a result of HB Farms and Mr. Hudson's fraudulent concealment, Bousquet Dairy has been damaged at least in the amount of \$197,750 for the winning bid, \$48,758.17 in transmission repair costs, and \$4,500 in transportation costs.

FOURTH THEORY OF RECOVERY – BREACH OF WARRANTY

48. All factual allegations above are incorporated herein by reference.

49. Mr. Hudson, on behalf of HB Farms, expressly warranted to Bousquet Dairy the Tractor was in good condition.

50. HB Farms and Mr. Hudson breached the warranty by delivering the Tractor with a nonfunctional transmission.

51. As a result of HB Farms and Mr. Hudson's breach of warranty, Bousquet Dairy has been damaged at least in the amount of \$197,750 for the winning bid, \$48,758.17 in transmission repair costs, and \$4,500 in transportation costs.

FIFTH THEORY OF RECOVERY – BREACH OF CONTRACT

52. All factual allegations above are incorporated herein by reference.

53. Bousquet Dairy and HB Farms entered into a contract for the sale of the Tractor.

54. Bousquet Dairy has complied with each and every condition precedent for the sale of the Tractor.

55. HB Farms materially breached the contract by misrepresenting/concealing the condition of the Tractor's transmission and delivering the Tractor with a nonfunctional transmission.

56. As a result of HB Farms' breach of contract, Bousquet Dairy has been damaged at least in the amount of \$197,750 for the winning bid, \$48,758.17 in transmission repair costs, and \$4,500 in transportation costs.

SIXTH THEORY OF RECOVERY – UNJUST ENRICHMENT

57. All factual allegations above are incorporated herein by reference.

58. Bousquet Dairy has incurred costs of at least \$48,758.17 relating to the repair of the Tractor's transmission.

59. Bousquet Dairy has incurred additional costs of at least \$24,299.88 in other services and maintenance of the Tractor, unrelated to the transmission.

60. In the event Bousquet Dairy is granted rescission of the contract for sale of the Tractor, HB Farms would be unjustly enriched by Bousquet Dairy's repair of the transmission and other services and maintenance of the Tractor.

61. Upon rescission, HB Farms, in justice and fairness, ought to reimburse Bousquet Dairy \$73,058.05.

JURY TRIAL DEMAND

62. Bousquet Dairy hereby demands a trial by jury in Lincoln, Nebraska for all issues that may be triable by jury in this action.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Bousquet Dairy requests the Court enter judgment in its favor and against Defendants HB Farms and Mr. Hudson as follows:

- A. Under the First Theory of Recovery, rescission of the Tractor sale and monetary damages in the amount of at least \$197,750 for the winning bid, \$48,758.17 in repair costs, and \$4,500 in transportation costs.

- B. Under the Second Theory of Recovery, rescission of the Tractor sale and monetary damages in the amount of at least \$197,750 for the winning bid, \$48,758.17 in repair costs, and \$4,500 in transportation costs.
- C. Under the Third Theory of Recovery, rescission of the Tractor sale and monetary damages in the amount of at least \$197,750 for the winning bid, \$48,758.17 in repair costs, and \$4,500 in transportation costs.
- D. Under the Fourth Theory of Recovery, rescission of the Tractor sale and monetary damages in the amount of at least \$197,750 for the winning bid, \$48,758.17 in repair costs, and \$4,500 in transportation costs.
- E. Under the Fifth Theory of Recovery, rescission of the Tractor sale and monetary damages in the amount of at least \$197,750 for the winning bid, \$48,758.17 in repair costs, and \$4,500 in transportation costs.
- F. Under the Sixth Theory of Recovery, monetary damages in the amount of at least \$73,058.05.
- G. Attorney's fees as allowed by law.
- H. Costs of this action.
- I. Any other relief which the Court finds just and equitable.

Dated: August 1, 2023.

BOUSQUET DAIRY, INC., Plaintiff

By: **/s/ Stephen D. Mossman**
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